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ALEXANDER L. STEVAS
CLERK

82-1233
No.

In the Supreme Court of the United States

October Term, 1982

HELEN O'BANNON et al.

Petitioners

v.

EVANGELINE COLEMAN et al.

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Question Presented

QUESTION PRESENTED

May a district court look outside a federally approved state plan (Aid To Families With Dependent Children) for an eligibility standard not required by federal law, and not otherwise included in a plan which has been accepted and approved by the relevant federal agency?

Table of Parties

TABLE OF PARTIES

The caption of this case in the Court of Appeals for the Third Circuit is as follows:

COLEMAN, EVANGELINE, On behalf of herself and all others similarly situated,

Appellees

v.

O'BANNON, HELEN, Secretary of Pennsylvania Department of Public Welfare,

STOVALL, DON JOSE, Executive Director of the Philadelphia County Board of Assistance,

Appellants

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**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT**

Helen B. O'Bannon, Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania, hereby petitions that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Third Circuit entered September 30, 1982, rehearing denied October 27, 1982.

I. OPINIONS OF THE COURTS BELOW

The opinion of the Court of Appeals for the Third Circuit of which petitioners seek review is reproduced at 10a-11a. The opinion and order of the district court is reproduced at 1a through 9a.

II. JURISDICTION

The judgment of the Court of Appeals was entered September 30, 1982, rehearing was denied October 27, 1982. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254.

III. STATUTES INVOLVED

Title IV-A of the Social Security Act, "Grants To States For Aid And Services To Needy Families With Children And For Child-Welfare Services," provides:

The sums made available, under this section shall be used for making payments to States which have submitted and had approved by the Secretary, State plans for aid and services to needy families with children.

42 U.S.C. §601.

The Act further requires that a state plan: provide that no family shall be eligible for aid under that plan for any month if, for that month, the total income of the family (other than payments under the plan), without application of paragraph (8), exceeds 150 percent of the State's standard of need for a family of the same composition.

P.L. 97-35, 95 Stat. 357, Sec. 2303 (August 13, 1981),
42 U.S.C. §602(a) (18).

IV. STATEMENT OF THE CASE

Title IV-A of the Social Security Act, the Aid To Families With Dependent Children program, (AFDC) is one of many cooperative federalism social welfare programs. States that wish to participate must submit state plans to the specific federal agency (now Health and Human Services) for approval. Since the inception of the program Pennsylvania has participated and has had an approved state plan. One requirement for an AFDC state plan is that it set forth, in dollar amounts, what the state has determined as its "standard of need." At all times relevant, Pennsylvania's approved state plan documents specified that the "standard of need" was a series of dollar amounts (varying for family size and geographical areas) that also served as the payment level (the amount of assistance paid recipients with no other income) (Reproduced at 14a through 17a). State regulations governing administration of the plan provided the same (Reproduced at 18a through 20a). The federal government has regularly reviewed Pennsylvania's state plan and independently concluded that Pennsylvania's state plan provides that its payment level equals its standard of need (Reproduced 21a through 23a). Thus, as between the two parties to the state plan, there has always been unanimity that the state plan pegged the "standard of need" at the same amount as the payment level.

Congress, in 1981, enacted the Omnibus Budget Reconciliation Act of 1981, P.L. No. 97-35, 95 Stat. 357. Included within that Act, at Section 2303 (codified at 42

Statement of the Case

U.S.C. §602(a)(18)) was a gross income eligibility test which required all states to deny AFDC benefits to households whose monthly income exceeded 150% of the states established "standard of need." The Act nowhere defined "standard of need" nor in any way indicated that the "standard of need" referred to in Section 2303 was different than the "standard of need" already established by each state. Pennsylvania implemented Section 2303 by creating a gross income test of 150% of its payment level/ "standard of need."

Respondents, plaintiffs below, sued alleging that Pennsylvania was in conflict with Section 2303 because its "standard of need" was not its payment level, but rather was something known as the Woodbury Standard. The Woodbury Standard was developed in 1955 by the predecessor agency to Pennsylvania's Department of Public Welfare. It was essentially a market basket type of analysis of what was necessary to meet/maintain a minimum standard of health and human decency. The Woodbury Standard has been regularly updated by the Department of Public Welfare by repricing its components to reflect inflation.

At the hearing, plaintiffs stipulated that the Woodbury Standard was never included in Pennsylvania's approved state plan and was never reported to the federal government for any purpose. Specifically, they conceded that it was not reported to the federal government as Pennsylvania's "standard of need." The evidence presented was consistent with the stipulation.

The district court entered a declaratory judgment that the Woodbury Standard was Pennsylvania's "standard of need" for purposes of Section 2303, and enjoined de-

fendants from using any other standard to determine eligibility under that section. The Court further found the Woodbury Standard was referred to in a Department of Public Welfare Budget Request, Governors' Five Budgets, and a 1977 Department of Public Welfare publication. None of these documents were part of the federally approved state plan for AFDC, nor were they submitted to federal authorities.

The Third Circuit affirmed without opinion and denied reargument.

It is from the affirmance of the Third Circuit and of necessity the district court's opinion that defendants, petitioners herein, seek certiorari.

V. REASONS FOR GRANTING THE WRIT

This Case Raises Important Issues as to What a Court Can Consider When Determining What Is Included in an Approved State Plan for a Federally Funded Grant Program

As with all federal-state cooperative federalism programs, an AFDC state plan "is the central, organizing element of the Title IV-A program. A state's plan establishes both its funding relationship with the federal government and the substantive terms of all Title IV-A programs in which it has elected to participate." *Quern v. Mandley*, 436 U.S. 725, 741, 98 S.Ct. 2068, 2078 (1978). The plan is in the nature of a contract between the state and federal governments, and can only include what is clearly understood by the governmental parties. *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 101 S.Ct. 1531, 1539 (1981); *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347 (1974).

This Court, in the context of the Developmentally Disabled Assistance and Bill of Rights Act, and the Medical Assistance Act, has clearly stated that a state plan is in the nature of a contract. *Pennhurst State School and Hospital v. Halderman*, *supra*; *Harris v. McRae*, 448 U.S. 297, 100 S.Ct. 2671 (1980). There is no difference in the basic nature of the programs between those established by the Developmentally Disabled Assistance and Bill of Rights Act, Medical Assistance, and AFDC. All are voluntary programs based upon state and federal cooperation. *King v. Smith*, 392 U.S. 309, 88 S.Ct. 2128 (1968).

The section of Title IV-A at issue in this case, 42 U.S.C. §602(a) (18) is a subsection of Section 602(a) which lists what a state plan must provide. Therefore, the term "standard of need" used in Section 602(a) (18) must mean the "standard of need" already found in the state plan. The legislative history confirms this conclusion. The Senate Finance Committee Report stated:

The committee believes that there should be a cutoff point, and that it is reasonable to establish that point on the basis of the amount each State determines to be its standard of need. The standard of need is used to determine whether a family is eligible for any assistance, and a family which has an income more than 50% above that standard should not be considered to be in need.

S. Rep. 97-139, 97th Cong. 1st Sess. at 504, 1981 U.S. Code Cong. and Ad. News at 771.

Title IV-A does not impose a statutory definition of "standard of need" for inclusion in the state plan. However, an AFDC state plan must "specify a statewide standard, expressed in money amounts, to be used in determining (a) the need of applicants and recipients and (b) the amount of the assistance payment." 45 C.F.R. Sec. 233.20(a) (2) (i). The amount of the standard, with the exception of a one time adjustment required by Section 602(a) (23) not relevant here, is a matter within the discretion of the state. *Quern v. Mandley, supra*, at 436 U.S. 740, 98 S.Ct. at 2077; *Jefferson v. Hackney*, 406 U.S. 535, 92 S.Ct. 1724 (1972); *Rosado v. Wyman*, 397 U.S. 397, 90 S.Ct. 1207 (1970); *Dandridge v. Williams*, 397 U.S. 471, 90 S.Ct. 1153 (1970). But, even though the amount is in the state's discretion, the only place that

the state standard can be found is in the approved AFDC state plan. Indeed, where a state rule for the operation of a cooperative federalism program has not been federally approved as part of the state plan, the rule is invalid. *Forbes Health Systems v. Harris*, 661 F.2d 282 (3d Cir. 1981). And, as *Pennhurst State School and Hospital v. Halderman, supra*, holds, the plan can only include what is clearly understood by the federal and state parties.

In *Pennhurst*, the issue was whether the federal statutory conditions offered to the state were sufficiently clear that the state could be deemed to have agreed to them. Here, the issue is the dimensions of the federal-state agreement where the statute gives the states some discretion as to the amount of one required element of the plan. Despite differences as to the specific issues, the principle remains the same—what was the clear understanding of the parties. The Courts should allow the governmental parties to rely on the approved plan for their understandings.

In light of these precedents, the courts were required to interpret the state plan as they would a contract, and contract law limits review to the four corners of the documents, the court's duty being simply to give effect to the intent of the parties as expressed in the contract. *Pennzoil v. Fed. Energy Reg. Comm.*, 645 F.2d 360 (5th Cir. 1981); cert. denied, U.S. , 102 S.Ct. 1000; *Harrison Western Corp. v. Gulf Oil Co.*, 662 F.2d 690 (10th Cir. 1981); *Mellon Bank N.A. v. Aetna Business Credit, Inc.*, 619 F.2d 1001 (3rd Cir. 1980); *Washington Metro Trans. Auth. v. Mergentine*, 626 F.2d 959 (D.C. Cir. 1980). Restatement (Second) of Contracts §§201, 209, 210. Interpretation of an integrated contract is a question of law. Restatement (Second) of Contracts §212.

To the extent there existed an ambiguity within the body of the state plan, the intent of the parties expressed by their actions or words control. *Contractor Utility Sales Co., Inc. v. Certain-Teed Products Corp.*, 638 F.2d 1061 (7th Cir. 1981); *Pennzoil, supra*; *United States, etc. v. Haas & Haynie Corp.*, 577 F.2d 568 (9th Cir. 1978). Restatement (Second) of Contracts §§201, 202. Again, the parties to the contract should be allowed to rely on what they both agree are its terms.

This Court has held that states, when drafting their state plans, may set their "standard of need" at the same rate as their payment level. *Rosado v. Wyman, supra*. Pennsylvania's AFDC state plan unambiguously states that it has exercised this option. Petitioner's witnesses stated it was Pennsylvania's intent to exercise this option and the federal agency witness stated that the federal agency understood it was Pennsylvania's intent to exercise this option and concurred in its doing so. Despite the clear intent of the parties, the courts below went beyond the state plan and relied on collateral materials to define the Pennsylvania "standard of need" as something other than its payment level.

By their actions, the lower courts have disrupted the very basis and the system of control which Congress has chosen to create and operate when dealing with grant programs based upon cooperative federalism. The Third Circuit, in the past, has affirmed the validity of this system by specifically invalidating Pennsylvania regulations when it found they constituted amendments to a state plan where the federal agency had not approved the change. *Forbes Health Systems v. Harris, supra*. The courts below have removed the binding nature of the state plan that each of these programs requires. That decision is,

therefore, in conflict with opinions of this Court. *Pennhurst, supra; Harris v. McRae, supra; Edelman v. Jordan, supra.*

Moreover, unless these state plans are binding, neither the federal nor state governments can determine exactly what it is they are agreeing to no... can they reasonably anticipate the programmatic or fiscal responsibilities each is committing itself to. Without finality, neither taxpayers nor beneficiaries under the program can determine how their government will operate. Administrators will be chilled from making responsible decisions because they will never know when those actions will be taken out of the context in which they are made and used to somehow redefine a state plan.

To correct these errors by the lower courts, and to insure the necessary stability for all federal grant programs which are defined by state plans, this Court should issue a Writ of Certiorari to review this case.

VI. CONCLUSION

This Court should issue a Writ of Certiorari to the United States Court of Appeals for the Third Circuit to review its judgment entered July 20, 1982.

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APPENDIX

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Pennsylvania

C.A. No. 81-5003

EVANGELINE COLEMAN, et al.

vs.

HELEN O'BANNON, et al.

MEMORANDUM OPINION AND ORDER

WEINER, J.

February 11, 1982

This action was brought by the plaintiffs seeking a permanent injunction prohibiting the Secretary of Pennsylvania's Department of Public Welfare ("DPW") from denying supplemental benefits under the Aid to Families with Dependent Children ("AFDC") program to applicants and recipients whose gross incomes exceed 150% of Pennsylvania's payment level, but do not exceed 150% of Pennsylvania's actual standard of need.

The parties stipulated to the following facts. Plaintiff Evangeline Coleman ("Coleman") resides in Philadelphia with her three small minor children. Coleman's

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gross monthly income from her employment is \$662.20, from which she nets \$525.00 per month after taxes. From that sum, Coleman pays a babysitter \$215.00 per month and \$30.00 per month for carfare to and from work, leaving her a net of \$270.00 per month. Coleman has been receiving a supplemental public assistance benefit from DPW under the AFDC program for herself and her three children. In Philadelphia, the AFDC payment level for a family of four is \$381.00 per month, whereas under the Woodbury¹ standard updated through June 1981, it is \$652.04 per month. Coleman's gross monthly income from employment exceeds \$572.00 which is 150% of the payment level for a family of four in Philadelphia, but does not exceed \$978.05 which is 150% of the updated Woodbury standard. DPW has notified Coleman that her supplemental AFDC payments will be discontinued because her gross income exceeds 150% of Pennsylvania's standard of need.

The plaintiffs argue that Pennsylvania's active "standard of need" is the Woodbury standard as updated by DPW. The defendants on the other hand argue that Pennsylvania's state plan is a formal contract between DPW and the federal Department of Health and Human Services (HHS), and that the Woodbury Standard has never been adopted as part of Pennsylvania's state plan

¹ The Woodbury Standard was developed by a committee chaired by Dr. Mildred Fairchild Woodbury, which was appointed in 1955 by the Secretary of Pennsylvania, Department of Public Assistance (later merged with DPW) to determine the amount a Pennsylvania family needs to maintain a minimum standard of health and decency. See: *Gurley v. Wohlgemuth*, 421 F. Supp. 1337, 1342 n. 13a (1976).

nor has the state plan ever referred to the Woodbury Standard. Thus, the issue before this court is to determine Pennsylvania's standard of need as that term is used in the Omnibus Budget Reconciliation Act of 1981, (O.B.R.A.), Pub. L. 97-35, Sec. 2303 (August 13, 1981). That act, which amends section 402(a) of the Social Security Act, 42 U.S.C. 602(a), provides that a state plan for aid and services to needy families must:

“(18) provide that no family shall be eligible for aid under the plan for any month, if, for that month, the total income of the family (other than payments under the plan), without application of paragraph (8), exceeds 150 percent of the *State's standard of need* for a family of the same composition.” (emphasis added)

The defendants would have this court treat its plan as approved by HHS, as a contract, and then apply contract law in interpreting the plan. This argument ignores the fact that a state may not promulgate a plan contrary to federal requirements. *Rosado v. Wyman*, 397 U.S. 397, 420-421 (1970). They claim they have not done so because HSS has adopted its State Plan.

Defendants concede that DPW has never explicitly stated that its standard of need and payment level are one and the same. [Defendants' Memorandum in Opposition to Plaintiffs' Request for a Permanent Injunction, 6.] Nevertheless, they maintain that officials of HSS, who administer the AFDC program, are of the opinion that the standard of need in Pennsylvania and the payment level are equal. Yet, at a preliminary hearing held on January 6, 1981, one such official, Robert Clifford, testified only

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that states may establish a standard of need which differs from their level of payment except that states will violate Section 602(a)(23) of the Social Security Act, 42 U.S.C.A. §602(a)(23) if the established standard of need, at any time, falls below the level of need set as of July 1, 1969.² At no point did Clifford testify that Pennsylvania's standard of need and level of payment are the same.

Two DPW officials testified at the hearing to the effect that the Woodbury standard has never been incorporated into Pennsylvania's AFDC program. However, neither official offered any documentation to support this assertion.

In addition, defendants state that "[t]o determine what [Pennsylvania's] standard of need is requires simply looking at the plan." [Defendants' Memorandum in Opposition, 10]. However, defendants neither quote nor cite the pertinent provisions of the State Plan. On perusing Pennsylvania's Public Assistance Manual, 55 Pa. Code, §101.1 *et seq.*, we presume that defendants are re-

² 42 U.S.C.A. §602(a)(23) requires that:

" [a] State plan for aid and services to needy families with children must . . . provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

We note that, in order to comply with the above provision, DPW raised its level of payment on January 1, 1970, to meet the Woodbury Standard of need. [Defendants' Opposition Memorandum, 5].

lying on Sections 171.21 and 175.21. Sections 171.21 (a) - (1) and (a) (2) relate to need and amount of assistance under the AFDC program and read as follows:

"(a) *Standard of need.* Individual standard of need determinations will be made in accordance with the following:

(1) A person, or group applying together for assistance, is in need if income and other available resources as defined in this subpart are less than the family size allowance as established by regulation. The difference will be the amount of the assistance grant.

(2) The objective of this chapter is that the person or group shall have the amount of assistance needed for living requirements by assistance standards."

Section 175.21 (a) sets forth the following policy with respect to AFDC allowances and benefits:

"[T]he allowances of the Department will recognize certain amounts by family size that persons require to meet basic living requirements. The family size allowances will take into account costs for food, clothing, incidentals, shelter and utilities. These family size allowances will be used in computing the grant."

Read together, these provisions could conceivably be construed as establishing the level of payment to meet the standard of need. However, we decline to so construe them in light of the numerous explicit references in DPW's own documents to the Woodbury Standard as Pennsylvania's standard of need.

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For example, in the Fiscal Year 1981-82 DPW Budget Request, the report states in reference to the Commonwealth's cash grant level, that "[b]ased on the June, 1980 consumer price index, assistance grants were then 63% of the Woodbury Standard, a standard devised over 20 years ago. If enacted, the Administration's Welfare Reform Plan will eliminate the Woodbury Standard. . . ." [Plaintiff's Exhibit 29].

Moreover, a 1977 DPW publication titled "Poverty in Pennsylvania: the Challenge" devotes an entire chapter to the Woodbury Standard. In this chapter, the Woodbury Standard is described as the cost of a market basket of those items necessary for minimal maintenance by public assistance families. This description is followed by the statement that "[t]he Department of Public Welfare has based cash assistance grants on this 'Woodbury Standard' since 1957." [Plaintiff's Exhibit 2, p. 26].

In addition, the Pennsylvania Governor's Executive budget, for every fiscal year since 1974, has referred to the Woodbury Standard as "the Commonwealth's defined minimally acceptable standard of living." [Plaintiff's Exhibit 1, 22-28].

While it is far from clear how the current payment level was devised from the Woodbury Standard, Woodbury nevertheless appears to be the standard of need from which the Commonwealth measures its payments. See, *Gurley v. Wohlgemuth*, 421 F. Supp. 1337, F/N 13a (1976).

The United States Supreme Court has defined "standard of need" as the amount deemed necessary to provide for essential needs, such as food, clothing, and shelter.

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Quern v. Mandley, 436 U.S. 725, 737 (1978). The Woodbury Standard being the only computation presented to this court which reflects the items of essential needs, this court can only conclude that the Woodbury Standard is the standard of need for Pennsylvania.

Moreover, this court is unable to determine why DPW semi-annually updates the Woodbury Standard, by applying the Department of Labor's Consumer Price Index to the five major components of the standard, i.e., food, clothing, incidentals, shelter, and utility, if that standard is not the standard of need. Defendants claim that while the Woodbury Standard is used, "other factors [have] been used . . . against which the adequacy of DPW's standard of need/payment could be judged. . . ." [Defendants' Memo, 5]. What these other factors are, defendants do not inform this court.

DPW's argument that the Woodbury standard serves merely as a benchmark by which Pennsylvania's official standard of need is evaluated is strained to say the least. DPW's most recent data show that current payment levels represent only fifty-eight percent of the Woodbury Standard calculated as of June, 1981. [Memorandum in Support of Plaintiffs' Motion for a Temporary Restraining Order and/or Preliminary Injunction, 7; Plaintiffs' Exhibit 30]. In fact, Pennsylvania's level of payment has fallen below the Woodbury Standard during each year since 1970. [Defendants' Opposition Memorandum, 5].

We think it highly unlikely that the discrepancy between the level of payment and Woodbury Standard is explained by the theory that the former more accurately reflects the true standard of need. Instead, the more rea-

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sonable explanation is, simply that budgetary constraints have prevented Pennsylvania from establishing a payment level which meets the standard of need.

Our view finds support in DPW's Budget Request for Fiscal Year 1981-1982 which states that the Administration's proposed Welfare Reform Plan will replace the Woodbury Standard with the Lower Budget Standard ("LBS") recently developed by the Department of Labor. As the Woodbury Standard was devised over twenty years ago, the newer LBS is thought to "more accurately reflect[s] the level of assistance needed for a decent standard of living." [Plaintiffs' Exhibit 29, p. 40]. Significantly, the figures represented by the LBS are higher than those reflected by the Woodbury standard. In view of the fact that Pennsylvania's level of payment is considerably lower than both the Woodbury Standard and the LBS, we are unable to accept defendants' contention that the payment level also represents Pennsylvania's official standard of need.

Accordingly, we grant plaintiffs' motion and permanently enjoin defendants from denying supplemental benefits under the AFDC program to otherwise eligible applicants and recipients whose gross incomes exceed 150% of Pennsylvania's payment level but do not exceed 150% of the Woodbury Standard.

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ORDER

February 11, 1982

The defendants are permanently enjoined from denying supplemental benefits under the Aid to Families with Dependent Children Program to otherwise eligible applicants and recipients whose gross incomes do not exceed 150% of the Woodbury Standard.

IT IS SO ORDERED.

(s) Charles R. Weiner
Charles R. Weiner

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 82-1213

COLEMAN, EVANGELINE, on behalf of herself and all
others similarly situated

vs.

O'BANNON, HELEN, Secretary of Pennsylvania Department of Public Welfare; and STOVALL, DON JOSE, Executive Director of the Philadelphia County Board of Assistance

Helen O'Bannon and Don Jose Stovall

Appellants

Appeal From the United States District Court for the Eastern District of Pennsylvania (D.C. Civil No. 81-5003)

Argued
September 29, 1982

Before: ALDISERT and HIGGINBOTHAM, *Circuit Judges*,
and MEANOR, *District Judge*.*

*Honorable H. Curtis Meanor, of the United States District Court for the District of New Jersey, sitting by designation.

JUDGMENT ORDER

After consideration of all contentions raised by appellants, and for the reasons set forth in the district court opinions by the Honorable Charles R. Weiner, *Coleman v. O'Bannon*, Civ. No. 81-5003 (E.D. Pa. Feb. 12, 1982 and Mar. 17, 1982); it is

ADJUDGED and **ORDERED** that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellants.

BY THE COURT,

(s) Aldisert

Circuit Judge

Attest:

Sally Mrvos

Sally Mrvos, Clerk

DATED: Sep 30, 1982

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 82-1213

COLEMAN, EVANGELINE on behalf of herself and all
others similarly situated

v.

O'BANNON, HELEN, Secretary of Pennsylvania Department of Public Welfare; and STOVALL, DON JOSE, Executive Director of the Philadelphia County Board of Assistance

Helen O'Bannon and Don Jose Stovall,

Appellants

SUR PETITION FOR REHEARING

Present: SEITZ, *Chief Judge*, ALDISERT, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER and BECKER, *Circuit Judges*, and MEANOR, *District Judge*.*

The petition for rehearing filed by Helen O'Bannon and Don Jose Stovall, appellants in the above entitled case having been submitted to the judges who participated

*Honorable H. Curtis Meanor, United States District Court for the District of New Jersey, sitting by designation.

in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

(s) A. Leon Higginbotham, Jr.
Circuit Judge

Dated: Oct 27 1982

Letter Dated Nov. 9, 1976

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Philadelphia,
Pennsylvania, 19101**

**Mr. Frank S. Beal, Secretary
State Department of Public Welfare
P. O. Box 2675
Harrisburgh, Pennsylvania 17120**

**Re: OPC-11 No. 76-27—Simplified State
Plan—filed in binder**

Dear Mr. Beal:

**Attached is a copy of the approved referenced State
Plan material.**

Letter Dated Nov. 9, 1976

15a

If there are any questions or if additional information is needed regarding this material, please direct your inquiry to:

Mr. John P. Corey
Program Director
P.O. Box 7760
Philadelphia, Pennsylvania 19101
Telephone No. (215) 596-1320

Sincerely,

(s) Barbara P. Pomeroy for
Alwyn L. Carty
Regional Commissioner, SRS

Attachment

Revision: SRS-AT-77-27 (APA)

Sec. 2.3

Page 1

IV-A
Regulation

STATE OF PENNSYLVANIA

233.20
per AT 79-30
(OFR)
9/7/792.3 *Need and Amount of Assistance*PART I. Measuring need, Income and
Resources

(a) (1)

(1) (ii)
AT-76-177
12/14/76Submitted
AT-77-27
2/22/77(a) (1)
(i)

The State agency, in determining need and amount of assistance in accordance with the requirements of 45 CFR 233.20, takes into consideration any income and resources of any child or relative claiming aid under AFDC, or of any other individual (living in the same house as such child and relative) whose needs are taken into consideration in determining the need of such child or relative, as well as any expenses reasonably attributable to earning such income; except that an individual receiving SSI benefits (as defined in (a)-(1) (ii) of Section 233.20) is not included in the AFDC assistance unit (see also Sec. 2.3, page 2, part B of this State Plan). Statewide policies and procedures for the determination of need and amount of assistance have been established and are applied on an objective and equitable basis.

(a) (2)

A. Standard of Assistance

1. There is a Statewide standard of assistance, expressed in money amounts, used for determining need and amount of assistance for applicants and recipients. Any combining of the items of this standard in order to achieve a consolidated standard does not result in a reduction in the content of the standard below that of July 1, 1969. Attachment 2.3-A contains the current standard and the date of implementation of the standard.

(a) (2) 3212
(v) thru
 3213

2. Special needs items are specified in the standard of assistance.
[] No.

[x] Yes. The items which are recognized for all applicants or recipients for whom they are appropriate and the circumstances under which they will be considered are specified in Attachment 2.3-A.

(continued)

TN # 77-12-OIM

Approval Date June 14, 1977

Supersedes

TN # 76-27-OIM

Effective Date July 1, 1976

SECTION 175.21**ALLOWANCES AND BENEFITS****Effective January 1, 1980****ALLOWANCES AND BENEFITS PROVISIONS FOR
AFDC/GA****175.21 AFDC/GA ALLOWANCES AND BENEFITS
POLICY**

(a) The allowances of the Department will recognize certain amounts by family size that persons require to meet basic living requirements. The family size allowances will take into account costs for food, clothing, incidentals, shelter, and utilities. These family size allowances will be used in computing the grant.

(b) The Department will also recognize that there are certain special item allowances which certain clients require under special circumstances. These are called "special items" as defined by §175.23(b)(1) of this title (relating to requirements) and are confined to transportation, clothing and personal care items for entry into a rehabilitation center, tuberculosis sanitarium or residential school, hearing aid batteries or maintenance or both, and grants to decrease need for assistance.

**175.22 AFDC/GA ALLOWANCES AND BENEFITS
DEFINITIONS**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Assistance Unit—Defined in §171.22 of this title (relating to definitions).

Client—Applicant or recipient. Accordingly, such special need items are to be included, when appropriate, in determining the needs of eligible applicants *when initially authorizing assistance, as well as to clients in determining their ongoing needs.*

Grant Group—Defined in §171.21 of this title (relating to policy).

Tenant or Tenant-Boarder—A lone person whose rent, or rent and board arrangements with the client are independent of other persons. "Tenant Group" and "Tenant-Boarder Group" mean two or more persons living together as a family normally would and who have a joint rent, or rent and board arrangement.

175.23 AFDC/GA ALLOWANCES AND BENEFITS REQUIREMENTS

(a) *Basic Allowances.* Allowances used in computing the grant will be dependent on the family size and the county. The single statewide standard of assistance of the Commonwealth, expressed in money amounts, will be as follows:

Replacing March 12, 1979

175-3

DPW-OIM-PA MANUAL

20a
State Regulations

SECTION 175.23(a)

ALLOWANCES AND BENEFITS

EFFECTIVE January 1, 1980

FAMILY SIZE ALLOWANCES

SCHEDULE 1		NUMBER OF PERSONS IN ASSISTANCE UNIT						
		1	2	3	4	5	6	each additional person
		\$181	\$273	\$332	\$395	\$451	\$490	\$58
Bucks	Chester	Lancaster		Montgomery		Pike		
SCHEDULE 2		NUMBER OF PERSONS IN ASSISTANCE UNIT						
		1	2	3	4	5	6	each additional person
		\$172	\$262	\$318	\$381	\$438	\$478	\$58
Adams	Centre	Erie		Monroe		Union		
Allegheny	Columbia	Lackawanna		Montour		Warren		
Berks	Crawford	Lebanon		Northampton		Wayne		
Blair	Cumberland	Lehigh		Philadelphia		Westmoreland		
Bradford	Dauphin	Luzerne		Sullivan		Wyoming		
Butler	Delaware	Lycoming		Susquehanna		York		
SCHEDULE 3		NUMBER OF PERSONS IN ASSISTANCE UNIT						
		1	2	3	4	5	6	each additional person
		\$164	\$253	\$311	\$369	\$424	\$463	\$58
Beaver	Elk	Lawrence		Mifflin		Snyder		
Cameron	Franklin	McKean		Perry		Tioga		
Carbon	Indiana	Mercer		Potter		Venango		
Clinton						Washington		
SCHEDULE 4		NUMBER OF PERSONS IN ASSISTANCE UNIT						
		1	2	3	4	5	6	each additional person
		\$147	\$232	\$290	\$350	\$405	\$440	\$58
Armstrong	Clarion	Forest		Huntingdon		Northumberland		
Bedford	Clearfield	Fulton		Jefferson		Schuylkill		
Cambria	Fayette	Greene		Juniata		Somerset		

^{21a}
Characteristics of State Plans

Characteristics Series
Data as of October 1, 1980

Characteristics
of State Plans for

AID TO FAMILIES WITH DEPENDENT CHILDREN

under the
Social Security Act
Title IV-A

and for Guam, Puerto Rico, & Virgin Islands

- OLD AGE ASSISTANCE
- AID TO THE BLIND
- AID TO THE PERMANENTLY
& TOTALLY DISABLED

UNDER TITLES I, X, XIV, AND XVI (AABD)
OF THE SOCIAL SECURITY ACT

TABLE C

AMOUNTS FOR ALL BASIC NEEDS, AS DEFINED BY THE STATE IN ITS NEED STANDARD, AND AMOUNT OF PAYMENT TO A FAMILY WITH NO COUNTABLE INCOME AFTER APPLICATION OF ANY METHOD OF LIMITING PAYMENT USED BY STATE,
AS OF OCTOBER 1, 1980, 1979, BY STATE

State	Part 1: Family of 2 Persons (1 Needy Adult and 1 Child)		Part 2: Family of 4 Persons (1 Needy Adult and 3 Children)	
	Column 1: State Need Standard for All Basic Needs*	Column 2: Amount of Assistance Payment to a Family With No Income*	Column 1: State Need Standard for All Basic Needs*	Column 2: Amount of Assistance Payment to a Family With No Income*
Alabama	\$144.00	\$ 89.00	\$240.00	\$148.00
Alaska	400.00	400.00	514.00	514.00
Arizona	180.00	156.00	282.00	244.00
Kansas	193.00	133.00	273.00	188.00
California*	395.00	382.00	591.00	563.00
Colorado	229.00	229.00	351.00	351.00
Connecticut	331.00	331.00	477.00	477.00
Delaware	197.00	197.00	312.00	312.00
D.C.	311.00	225.00	481.00	349.00
Florida	150.00	150.00	230.00	230.00
Georgia	161.00	137.00	227.00	193.00
Hawaii	195.00	195.00	300.00	300.00
Iowa	390.00	390.00	546.00	546.00
Jamaica	298.00	224.00	421.00	316.00
Illinois	225.00	225.00	331.00	331.00
Indiana	247.00	195.00	363.00	315.00
Iowa	292.00	292.00	419.00	419.00
Kansas	265.00	265.00	365.00	365.00
Kentucky	162.00	162.00	235.00	235.00
Louisiana	289.00	110.00	494.00	188.00
Maine	307.00	207.00	522.00	352.00
Maryland	211.00	211.00	326.00	326.00
Massachusetts	314.00	314.00	445.00	445.00
Michigan	361.00	361.00	513.00	513.00
Minnesota	344.00	344.00	486.00	486.00
Mississippi	188.00	60.00	252.00	120.00
Missouri	250.00	199.00	365.00	290.00

*Effective 1/1/81 payment reduced to: \$374 for 2; \$550 for 4.

(continued)

Characteristics of State Plans

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Table C (continued)

State	Part 1: Family of 2 Persons (1 Needy Adult and 1 Child)		Part 2: Family of 4 Persons (1 Needy Adult and 3 Children)	
	Column 1: State Need Standard for All Basic Needs*	Column 2: Amount of Assistance Payment to a Family With No Income*	Column 1: State Need Standard for All Basic Needs*	Column 2: Amount of Assistance Payment to a Family With No Income*
Montana	\$193.00	\$193.00	\$331.00	\$331.00
Nebraska	270.00	270.00	400.00	400.00
Nevada	229.00	211.00	341.00	314.00
New Hampshire	292.00	292.00	392.00	392.00
New Jersey	273.00	273.00	414.00	414.00
New Mexico	178.00	178.00	267.00	267.00
New York	333.00	333.00	476.00	476.00
North Carolina	167.00	167.00	210.00	210.00
North Dakota	270.00	270.00	408.00	408.00
Ohio	284.00	216.00	431.00	327.00
Oklahoma	218.00	218.00	349.00	349.00
Oregon	281.00	281.00	376.00	376.00
Pennsylvania	273.00	273.00	395.00	395.00
Puerto Rico	132.00	75.00	228.00	130.00
Rhode Island	276.00	276.00	389.00	389.00
South Carolina	144.00	99.00	229.00	158.00
South Dakota	280.00	280.00	361.00	361.00
Tennessee	142.00	97.00	217.00	148.00
Texas	115.00	86.00	187.00	140.00
Utah	371.00	269.00	572.00	415.00
Vermont	558.00	410.00	753.00	553.00
Virgin Islands	154.00	154.00	263.00	263.00
Virginia	201.00	181.00	314.00	283.00
Washington	339.00	339.00	483.00	483.00
West Virginia	219.00	164.00	332.00	249.00
Wisconsin	443.00	377.00	622.00	529.00
Wyoming	280.00	280.00	340.00	340.00

*Amount is rounded to the next highest dollar.



No. 82-1233

IN THE SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM, 1982

HELEN O'BANNON, et al.,

Petitioners,

vs.

EVANGELINE COLEMAN, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

DEBORAH HARRIS, ESQUIRE
Counsel for Respondent

COMMUNITY LEGAL SERVICES, INC.
c/o LAW CENTER NORTH CENTRAL
3638 North Broad Street
Philadelphia, PA 19140
Tele: (215) 227-2400

I. COUNTER STATEMENT OF THE QUESTION PRESENTED

Whether the Court of Appeals for the Third Circuit erred in unanimously affirming without opinion the trial court's determination that Pennsylvania's "Woodbury Standard" is the State's actual "standard of need" for purposes of calculating eligibility limits under the Social Security Act?

II. TABLE OF CONTENTS

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III. TABLE OF CITATIONS

<u>CASE</u>		<u>PAGE</u>
<u>Rosado v. Wyman</u> , 397 U.S. 397 (1970)		6
<u>STATUTE</u>		
Social Security Act, 42 U.S.C. §601 <u>et seq.</u>		5

IV. SUMMARY OF ARGUMENT

Review should be denied because the trial court's decision, affirmed per curiam by the Third Circuit Court of Appeals, has no importance outside Pennsylvania.

The trial court found that Pennsylvania's "Woodbury Standard" is the State's actual "standard of need" for purposes of calculating eligibility limits under the Aid to Families With Dependent Children (AFDC) program. The court's decision was based on the particular facts concerning Pennsylvania's development and official promulgation of its "Woodbury Standard," and has no effect on AFDC eligibility limits in other states. The decision therefore does not have sufficient public importance to warrant review by this Court.

V. ARGUMENT

REVIEW IS NOT WARRANTED SINCE THE DETERMINATIONS
BELOW TURN ON FACTS PECULIAR TO PENNSYLVANIA, DO NOT
CONFLICT WITH ANY OTHER DECISION, AND
LACK NATIONAL PUBLIC SIGNIFICANCE

The district court found after trial that Pennsylvania's "Woodbury Standard" is the State's actual "standard of need" for purposes of setting eligibility limits under the federal-state Aid to Families With Dependent Children (AFDC) program, 42 U.S.C. §601 *et seq.* The court rejected petitioner's claim that Pennsylvania's standard of need is the same as its payment level for AFDC benefits simply because that is what the State has reported to the Department of Health and Human Services (HHS).

The Court of Appeals for the Third Circuit unanimously affirmed the trial court's decision without opinion and denied rehearing. Review by this Court is equally unwarranted.

First, this Court should deny the writ of certiorari because the trial court's decision turns on facts peculiar to Pennsylvania and therefore has no public significance beyond Pennsylvania.

The "Woodbury Standard," which the trial court found is Pennsylvania's actual "standard of need," was developed in 1955 by Pennsylvania's Department of Public Welfare (DPW) to determine the amount that a Pennsylvania family needs to maintain minimum health and decency. (Memorandum Opinion at 2an.1) The record shows that for the past

twenty-five years, Pennsylvania DPW has updated the standard to reflect increases in the cost of living in Pennsylvania and has issued periodic reports stating the percentage of the Woodbury Standard which is met by AFDC payment levels. Pennsylvania's Governors and the Secretaries of DPW have repeatedly referred to the Woodbury Standard as "the cost of basic needs" in the Commonwealth and the Commonwealth's "minimum acceptable standard of living." (Memorandum Opinion at 6a-8a).

No other state uses the Woodbury Standard, which is Pennsylvania's measure of the cost of basic living needs in Pennsylvania. Nor is respondent aware of any other state with a comparable history of promulgating and updating a standard of need which the state does not report to HHS. Certainly, no other federal court has even been asked to consider whether a state which has made numerous official pronouncements concerning its standard of need may use a different standard to set income eligibility limits for AFDC families.

Since the case is sui generis and turns solely upon its own particular facts, there is no conflict with the decisions of other Courts of Appeals and there is no public significance outside Pennsylvania. The case is therefore not appropriate for review by this Court.

Furthermore, this Court should deny review because the decisions below are correct on the merits. The courts

below properly rejected petitioner's argument that Pennsylvania's standard of need is the same as its payment level for AFDC benefits simply because HHS has accepted the State's representations. It is well established that the courts have the power and duty to enjoin violations of the Social Security Act whether or not HHS has exercised its authority to withhold federal funds for non-compliance with federal requirements.

See, e.g., Rosado v. Wyman, 397 U.S. 397, 420-21 (1970). The claimed conflict with decisions of this Court does not exist and review is therefore unwarranted.

VI. CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

Deborah Harris
DEBORAH HARRIS
Counsel for Respondent

COMMUNITY LEGAL SERVICES, INC.
LAW CENTER NORTH CENTRAL
3638 North Broad Street
Philadelphia, Pennsylvania 19140
(215) 227-2400

DATED: February 16, 1983

NO. 82-1333

IN THE SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM, 1982

HELEN O'BANNON, et al.,

Petitioners,

v.

EVANGELINE COLEMAN, et al.,

Respondents.

AFFIDAVIT OF SERVICE

I, DEBORAH HARRIS, ESQUIRE, being duly sworn according to law, hereby state that I am a member of the bar of the Supreme Court of Pennsylvania and the Third Circuit Court of Appeals, that I have applied for membership in the bar of the Supreme Court and that on this date completed copies of Respondent's Motion to Proceed In Forma Pauperis and Respondent's Brief in Opposition to Petition for Writ of Certiorari were forwarded by first class mail, postage prepaid as follows:

10 copies to:

Alexander L. Stevens, Clerk
Supreme Court of the United States
One First Street, N.E.
Washington, D. C. 20543

2 copies to:

Jonathan Vipond, III, Esquire
Stanley I. Slipakoff, Esquire
Counsel for Petitioner
Office of Legal Counsel
Department of Public Welfare
Room 305, State Office Building
1400 Spring Garden Street
Philadelphia, Pennsylvania 19130

To my knowledge, the mailing took place on this date
within the permitted time.

DATED:

February 17, 1983

Deborah Harris
DEBORAH HARRIS

Sworn to and Subscribed
Before me this 17th day

of February 1983

JACQUELYN D. BROWN
NOTARY PUBLIC

JACQUELYN D. BROWN
Notary Public, Phila., Phila. Co.
My Commission Expires March 22, 1984

Office-Supreme Court, U.S.
FILED
FEB 22 1983
ALEXANDER L. STEVENS,
CLERK

No. 82-1233

IN THE SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM, 1982

HELEN O'BANNON, et al.,

Petitioners,

v.

EVANGELINE COLEMAN, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT'S MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS

DEBORAH HARRIS, ESQUIRE
Counsel for Respondent

COMMUNITY LEGAL SERVICES, INC.
LAW CENTER NORTH CENTRAL
3638 North Broad Street
Philadelphia, Pennsylvania 19146
(215) 227-2400

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The movant, Evangeline Coleman, seeks leave to file her Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit and to proceed in forma pauperis pursuant to Rule 46.

The movant was granted leave to proceed in forma pauperis as plaintiff in the District Court, and proceeded in forma pauperis as appellee in the Court of Appeals pursuant to Rule 24 of the Federal Rules of Appellate Procedure.

The movant's affidavit in support of this Motion is attached hereto.

Deborah Harris
DEBORAH HARRIS
Counsel for Movant/Respondent

COMMUNITY LEGAL SERVICES, INC.
LAW CENTER NORTH CENTRAL
3638 North Broad Street
Philadelphia, Pennsylvania 19140
(215) 227-2400

IN THE SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM, 1982

HELEN O'BANNON, et al.,

Petitioners,

v.

EVANGELINE COLEMAN, et al.,

Respondents.

AFFIDAVIT IN SUPPORT OF MOTION TO
PROCEED IN FORMA PAUPERIS

I, Evangeline Coleman, being duly sworn, depose and say that I am the respondent in the above-entitled case; that in support of my motion to proceed in forma pauperis I state that because of my poverty I am unable to pay the costs of said proceeding or give security therefor; and that I believe that the writ of certiorari should be denied.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting this petition are true.

1. Are you presently employed?

Yes. I am employed at the J.M. Nursing Home,
1001 Wallace Street, Philadelphia. I earn \$676.00 per
month gross.

2. Have you received within the past 12 months
any income from a business, profession or other form
of self-employment, or in the form of rent payments,
interest, dividends or other source?

Yes. In early 1982 I received supplemental
public assistance checks under the Aid to Families With
Dependent Children program.

3. Do you own any cash or checking or savings
accounts?

No.

4. Do you own any real estate, stocks, bonds,
notes, automobiles, or other valuable property (excluding
ordinary household furnishings and clothing)?

No.

5. List the persons who are dependent upon you for
support and state your relationship to those persons.

Lakesha Coleman, daughter, age 3.

I UNDERSTAND THAT A FALSE STATEMENT OR ANSWER TO ANY QUESTIONS
IN THIS AFFIDAVIT WILL SUBJECT ME TO PENALTIES FOR PERJURY.

Evangeline Coleman
EVANGELINE COLEMAN

Sworn to and Subscribed
Before me this 16th day

of January, 1983

Jacquelyn D. Brown
NOTARY PUBLIC

JACQUELYN D. BROWN
Notary Public, Phila., Phila. Co.
My Commission Expires March 22, 1984